BAIL SLIP

The Appellants [Accused] were released on Bail in and by the Order of Court dated 12.5.04 in Crl.MP.No.5887/04 in CA.No.664/04.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.09.2006

CORAM

THE HONOURABLE MR. JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

CRL. APPEAL NO. 664 OF 2004

1. S.K.Lodh
2. Sanjaykumar Jha .. Appellant

- Vs -

State rep. by
Sub-Inspector of Police
Aruvankadu Police Station. .. Respondent

Criminal Appeal filed against the conviction and sentence passed by the learned Sessions Judge, Nilgiris at Ootacamund, in S.C. No.41 of 2003 dated 29.4.04 as stated therein.

For Appellant : Mr.A.Radhakrishnan

For Respondent : Mr.P.Kumaresan, APP

JUDGMENT
(JUDGMENT OF THE COURT WAS DELIVERED BY M.CHOCKALINGAM, J.)

Aggrieved over the judgment of the Principal Sessions Division, Ooty, made in S.C. No.41/03, whereby A-1 was charged under Section 307 IPC and A-2 was charged under Section 307 read with 34 IPC at the end of trial, and on being found guilty the appellants were sentenced to life imprisonment. Hence, the appellants have broughtforth this appeal.

2. The short facts necessary for the disposal of this appeal could be stated thus :-

P.W.1 is a security officer and P.W.2 is the General Manager Cordite factory, Aravangadu, Ooty. P.W.2, as the General Manager of the factory, took severe measures, when he found that illegal trafficking in narcotic drugs and also finance was being made among the staffs and when he implemented the said measures, the same was not liked by the employees. Some people were dismissed from service and A-1 was one among them. Prior to the occurrence, a show cause notice was issued on A-1 on 11.12.02 and following an enquiry he was

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terminated on 5.2.03. A-2 is also a co-employee in the said factory with A-1. On 27.2.03, as usual P.W.1 went for walking. At around 5.30 a.m., when he was walking on the Aravangadu-Ooty Main Road, at the road junction, both the accused, A-1 armed with an iron pipe and A-2 armed with a log, attacked him and in the course of the said occurrence, he sustained injuries and when he attempted to snatch the iron pipe from the hands of A-1, A-1 sustained injuries and, therefore, A-1 left the same and apart from that A-1 also left one of his chappals and both the accused ran away from the place. P.W.2 took the material objects available in the place and he also saw both the miscreants running away from the place. He, thereafter, came back to his house, informed his wife and, thereafter, informed P.W.1, the security officer of the factory and also P.W.10, the medical personnel over phone.

3. On receiving information over phone from P.W.2, P.W.1 rushed to the house of P.W.2 and took him in an ambulance to the hospital in the factory and P.W.2 was given initial treatment by P.W.10, who issued Ex.P-13, the wound certificate. The injuries noted in the wound certificate are :-

> "1) A linear lacerated wound about 5 cms over the forehead midventral region. Bleeding more present.
> 2) Abrasion left wrist.
> 3) Contusion left thigh (postero lateral aspect).
> 4) Contusion lower portion of left leg (posterior aspect).
> 5) Lacerated wound right knee over the pattella."

Then he was taken to the Wellingdon Hospital, where he was given treatment and, thereafter, he was advised to be taken to K.G. Hospital, Coimbatore for further treatment. Accordingly, P.W.2 was taken there and treated.

4. In the meantime, P.W.1, the security officer, on instructions from P.W.1 gave a report to the Sub-Inspector of Police, who was on duty at that time. The said complaint is Ex.P-1 on the strength of which a case came to be registered by the respondent-police in crime No.30/03 under Section 307 IPC. Ex.P-17 is the printed first information report. Express first information report was despatched to the court and the investigating officer was informed.

5. P.W.13 is the Inspector of Police at the investigating police station during the relevant time. On receipt of a copy of the printed first information report, he proceeded to the scene of occurrence and made an observation in the presence of witnesses and prepared Ex.P-4, observation mahazar and also drew a rough sketch, Ex.P-18. He recovered the material objects available at the scene of occurrence and also the material objects produced by P.W.1. A-1 was arrested on 14.3.03 and at that time he gave a confession statement, the admissible portion of which is marked as Ex.P-15, pursuant to which M.O.9, iron pipe and also the other chappal worn by A-1 were recovered under a cover of a mahazar. On the confession of A-1, A-2

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was also arrested on the same day. As A-2 was having injuries on his person, he sent to the hospital for treatment.

6. P.W.7 is the doctor at the hospital before whom A-2 was taken for medical examination. On examination of A-2, the doctor, P.W.7 found the following injuries on his person, which is found noted in Ex.P-10, the accident register :-

> "1) Infected wound 1 x 1 cm over dorsum of base of F5 left.
>
> 2) Healed wound ½ x ½ cm over palmer aspect of base of F5 left."

A-2 was thereafter treated by P.W.8, the doctor attached to Aravangadu hospital and Ex.P-11 is the wound certificate issued by him.

7. P.W.13, continuing with his investigation, gave a requisition for conducting test identification parade. Consequent upon the requisition given by the investigating officer, test identification parade was conducted in which P.W.2 identified the accused. The material objects recovered were forwarded to the court with a requisition to send the same for chemical analysis and, accordingly, they were sent and the relevant certificates were obtained and placed before the court. On completion of the investigation, the investigating officer filed the final report against the accused, the case was committed to the Court of Sessions, necessary charges were framed and the case was tried by the trial court. In order to substantiate the charges, the prosecution examined thirteen witnesses and relied on twenty exhibits and ten material objects. After the evidence on the side of the prosecution was over, the court questioned the accused under Section 313 Cr.P.C. on the incriminating circumstances appearing against them. They denied all the circumstances as false. No defence witness was examined. After hearing the arguments advanced by the counsel on either side and on scrutiny of the materials, the court was of the opinion that the prosecution has proved the case against both the accused and found that it is a case of attempt to murder and, therefore, must be viewed seriously, and, therefore, imposed the punishment of life sentence, which is being challenged in this appeal.

8. Learned counsel appearing for the appellants, at the time of arguments, would make the following submissions. Firstly, the prosecution had not proved the motive for the appellants to commit the offence. P.W.2 is the General Manager of the factor. He took rigorous measures against the employees and so far as A-1 is concerned, a show cause notice was issued on 11.12.02 and a termination order was served on 5.2.03. According to the prosecution, the occurrence has taken place on 27.2.03, which is after a period of 22 days. If at all A-1 had been aggrieved over his dismissal from service, he would not have waited for 22 days, but would have committed the offence even earlier and, therefore, there is a gap of 22 days from the date of termination to the date of

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occurrence, which is definitely a dent in the prosecution case as regards the motive. Insofar as A-2 is concerned, learned counsel would contend that A-2 was in the employ in the factory till the trial of the case and there was also no motive for A-2 at all to commit the crime as putforth by the prosecution. In the instant case, according to the prosecution, P.W.2, who was going for a walk at 5.30 a.m. in the morning, was attacked by two persons. But it is pertinent to point out that he has not given the complaint to the police. The evidence of P.W.2 would disclose that after the assailants attacking him and escaping from the place of occurrence, he gathered all the material objects, went to his house and informed his wife and, thereafter, informed P.W.1, the security officer and P.W.7, the doctor over phone, but he has not informed the police. It is further to be added that P.W.2 did not given the complaint, but the complaint, Ex.P-1, was by P.W.1. In the said complaint it is found that two persons were involved in the occurrence and that P.W.1 had not given the name of the assailants or any description as regards their appearance or age or that they were employed in the factory and there is no whisper at all about any of the above in Ex.P-1, the complaint given by P.W.1. Even P.W.2 has not spoken anything about the accused being workers in the factory. Therefore, only on surmises and conjectures, the prosecution has thought it fit to implicate the accused in the crime. P.W.1, who was in no way connected with the occurrence has given the complaint and in such circumstances, P.W.2, who is alleged to have been injured in the occurrence has not given the said complaint and, therefore, Ex.P-1 loses its effect. Added further the learned counsel, in the instant case, test identification parade was conducted on 18.3.03 and the accused were arrested on 14.3.03 and in the intervening period of four days the photographs of the accused were shown to P.W.2 and, therefore, he had identified the accused, as their photographs were available in the registers and, therefore, the test identification parade cannot be given any importance at all. Added further the learned counsel, in the instant case, the alleged confession and the recovery of the material objects were nothing but subsequent introduction to strengthen the prosecution case. As regards A-2, there is no material at all and only on the confession given by A-1, A-2 has been arrested and, the confession of A-1 would in no way bind A-2. Added further the learned counsel, even assuming there is a case of attempt to murder against the accused, yet the same would not fall under the penal provision and the lower court has taken an extreme step to find the accused guilty of the offence under Section 307 IPC and awarded life imprisonment, which, on the facts of the case, is not sustainable.

9. The Court heard the learned Addl. Public Prosecutor appearing for the State on the above contentions and also paid its anxious considerations to the submissions made. In the instant case, A-1 and A-2 stood charged under Sections 307 and 307 read with 34 IPC respectively for an offence that took place on 27.2.03 at about 5.30 a.m. When P.W.2, the General Manager of the factory was going for a walk on the road. From the evidence of P.W.2 it would be clear that he was able to identify the accused even at that time, though he did not know their names or that they worked in the factory and that

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immediately after the occurrence at 5.30 a.m., he went back to his house, informed his wife and, thereafter, informed P.W.1 and P.W.7 over phone and P.W.1 came with an ambulance and took P.W.2 to the doctor. P.W.1 thereafter went to the police station and gave the complaint, Ex.P-1. It is to be noted that even in Ex.P-1, P.W.1 has mentioned that two assailants had attacked P.W.2 and their act was also mentioned. In the instant case, the contention putforth by the learned counsel for the appellants that P.W.1, who was not injured either or an eye witness to the occurrence, has given the complaint and, therefore, Ex.P-1 loses its significance has got to be rejected for the simple reason that Ex.P-1 would only serve to the extent of setting the criminal law in motion.

10. In the instant case, even according to the prosecution there was no eye witness. It was only P.W.2, who was walking at that time when he was attacked and, therefore, P.W.2 was the competent person to speak about the same. The evidence of P.W.2 clearly discloses that the accused attacked him with an iron pipe and stick and then they ran away from the place. Thereafter, he collected all the material objects and he went to his house and informed his wife and, thereafter, he informed P.W.1, the security officer and P.W.7, the medical officer over phone and they arrived and he was given medical treatment. The earliest document, which has come into existence in this case is Ex.P-13, where he has clearly mentioned that at the place of occurrence two assailants attacked him with weapons and this would go to show that such an occurrence, as putforth by P.W.2, has taken place.

11. Learned counsel for the appellants would contend that P.W.2 could have identified the accused in the test identification parade only because their photographs were shown to him as they were available in the official registers. In the instant case, it is pertinent to point out that both the accused were arrested on 14.3.03 and A-1 gave a confession statement which led to the recovery of the material objects. It is pertinent to point out that one chappal was recovered by the investigating officer from the place of occurrence and the other chappal was recovered on A-1 pointing out the place, which definitely implicates A-1 as one of the assailants on P.W.1. P.W.2 has clearly identified the accused at the time of the identification parade. Therefore, on the basis of the materials discussed above, the contention of the counsel that photographs, which were available in the register were shown to P.W.2 so as to enable him to identify the accused has got to be brushed aside. If this contention has got to be accepted in every case where the employees attack the managerial personnel, as their photographs would be available in the registers, then, in each and every case of this nature, the arrest and test identification parade has got to be eschewed. In the instant case, without any lapse of time and that too within a period of three days test identification parade has been conducted in which P.W.2 has identified the accused and this would clearly point out that he saw the assailants during the attack on him.

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12. Apart from this, in the instant case, A-1 has got sufficient motive as he was served with termination on 5.2.03 following which

within 22 days the occurrence has taken place and that P.W.2 has also identified him and all the other attendant circumstances put together would clinchingly point the finger on A-1 for recording a conviction. But insofar as A-2 is concerned, there is no material available in the evidence as putforth by the prosecution and it is also pertinent to point out that he had served in the factory until his arrest. Apart from that, no motive also has been attributed to A-2 and in the absence of any material, the prosecution has definitely failed to prove their case as against A-2. Insofar as A-1, is concerned, though this Court has found him guilty of causing injury to P.W.2, yet, the wound certificate, Ex.P-13 issued to P.W.2, would only show that P.W.2 had suffered a grievous hurt on the skull. It is true that A-1 attacked P.W.2 with an iron pipe, but there is nothing to show that it was an attempt to commit the murder of P.W.2. In the circumstances, the act of A-1 will not attract the penal provision under Section 307 IPC, but would only fall under Section 326 IPC, for which a sentence of five years rigorous imprisonment could be awarded to A-1, which would meet the ends of justice.

13. In the result, the appeal is allowed in part. The judgment of the trial court finding A-1 under Section 307 IPC is set aside and instead it is modified to one under Section 326 IPC for which he stands sentenced to rigorous imprisonment for a period of five years. Insofar as the judgment of the trial court finding A-2 guilty under Section 307 read with 34 IPC is set aside and he is acquitted of the charge framed against him. It is reported that A-1 is on bail. The learned Sessions Judge is directed to take steps to secure A-1 and commit him to prison to serve the remaining period of sentence imposed upon him. Bail bonds executed by A-2 shall stand cancelled.

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GLN

Sd/-
Asst. Registrar

//true copy//

Sub Asst.Registrar

To

1) The Sessions Judge, The Nilgiris.
2) The Judicial Magistrate, Coonoor.
3) - Do - Thro' The Chief Judicial Magistrate, The Nilgiris.
3) The District Collector, The Nilgiris.
4) The Director General of Police, Chennai.
5) The Public Prosecutor, High Court, Madras.
6) The Superintendent of Central Prison, Coimbatore.
7) The Sub-Inspector of Police, Aruvankadu Police Station, Nilgiris.

+ Two Ccs to Mr.A.Radhakrishnan, Advocate Sr.No.44316.

GV (CO)
RSM/11.10.2006

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